

amount which is in excess of the valuation of the estate; the general creditors' claims may be prorated or disallowed entirely, and the preferred claims may be prorated subject to the limitations contained in paragraph (d) of this section.

(d) If the income of the estate is not sufficient to permit the payment of allowed claims of general creditors within 3 years from the date of allowance; or to permit payment of the allowed claims of preferred creditors, except the United States, within 7 years from the date of allowance, then the unpaid balance of such claims shall not be enforceable against the estate or any of its assets.

(e) In the event that it is determined that a part or portion of the estate is to lose its trust character pursuant to findings made under § 4.206, then the administrative law judge may in his discretion prorate all claims and reduce the allowance thereof on a ratio comparable with that existing between the total value of the estate and the value of that portion which is to lose its trust character.

[36 FR 7186, Apr. 15, 1971, as amended at 51 FR 35219, Oct. 2, 1986]

#### **§ 4.252 Property subject to claims.**

Claims are payable from income from the lands remaining in trust. Further, except as prohibited by law, all trust moneys of the deceased on hand or accrued at time of death, including bonds, unpaid judgments, and accounts receivable, may be used for the payment of claims, whether the right, title, or interest that is taken by an heir, devisee, or legatee remains in or passes out of trust.

#### WILLS

#### **§ 4.260 Making; review as to form; revocation.**

(a) An Indian of the age of 18 years or over and of testamentary capacity, who has any right, title, or interest in trust property, may dispose of such property by a will executed in writing and attested by two disinterested adult witnesses.

(b) When an Indian executes a will and submits the same to the Superintendent of the Agency, the Super-

intendent shall forward it to the Office of the Solicitor for examination as to adequacy of form, and for submission by the Office of the Solicitor to the Superintendent of any appropriate comments. The will or codicil or any replacement or copy thereof may be retained by the Superintendent at the request of the testator or testatrix for safekeeping. A will shall be held in absolute confidence, and no person other than the testator shall admit its existence or divulge its contents prior to the death of the testator.

(c) The testator may, at any time during his lifetime, revoke his will by a subsequent will or other writing executed with the same formalities as are required in the case of the execution of a will, or by physically destroying the will with the intention of revoking it. No will that is subject to the regulations of this subpart shall be deemed to be revoked by operation of the law of any State.

[36 FR 7186, Apr. 15, 1971, as amended at 36 FR 21284, Nov. 5, 1971; 36 FR 24813, Dec. 23, 1971; 53 FR 48648, Dec. 2, 1988]

#### **§ 4.261 Anti-lapse provisions.**

When an Indian testator devises or bequeaths trust property to any of his grandparents or to the lineal descendant of a grandparent, and the devisee or legatee dies before the testator leaving lineal descendants, such descendants shall take the right, title, or interest so given by the will per stirpes. Relationship by adoption shall be equivalent to relationship by blood.

[54 FR 8329, Feb. 28, 1989]

#### **§ 4.262 Felonious taking of testator's life.**

No person who has been finally convicted of feloniously causing the death or taking the life of, or procuring another person to take the life of, the testator, shall take directly or indirectly any devise or legacy under deceased's will. All right, title, and interest existing in such a situation shall vest and be determined as if the person convicted never existed, notwithstanding § 4.261.